



Board of Contract Appeals
U. S. Department of Housing and Urban Development
Washington, D.C. 20410-0001

In the Matter of:

DANA PHILLIPS,

Petitioner

HUDBCA No. 03-A-CH-AWG17

FHA No. 7-71057731

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For the Secretary

DECISION ON ADMINISTRATIVE WAGE GARNISHMENT

Background

Petitioner has requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U. S. Department of Housing and Urban Development ("HUD"). This alleged debt has resulted from a defaulted loan which was insured against non-payment by the Secretary of HUD. This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, {31 U.S.C. § 3720D) and applicable Departmental regulations. The administrative judges of this Board have been designated to determine whether this debt is past-due and enforceable against Petitioner and, if so, whether the Secretary may collect the alleged debt by administrative wage garnishment. 24 C.F.R. § 17.170 (b). Pursuant to 31 C.F.R. § 285.11 (f) {10) (i), issuance of a wage withholding order was stayed until the issuance of this written decision.

The hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170, and is limited to a review of the written record, unless otherwise ordered. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11 (f) (8) (i) . Petitioner thereafter must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. 31 C.F.R. § 285.11(f) (8) (ii).

Summary of Facts and Discussion

31 U.S.C. § 3720D authorizes Federal agencies to utilize administrative wage garnishment as a remedy for the collection of debts owed to the United States Government. The review of the record of this proceeding is conducted" in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170.

On July 14, 1994, Petitioner and Michael C. Phillips executed and delivered to U.S. Bank National Association f/k/a First Bank (N.A.), an installment note in the amount of \$25,000 for a home improvement loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement, hereinafter "Secy. Stat.", unmarked Exh.). Petitioner subsequently defaulted on the note. Consequently, U.S. Bank National Association assigned the note to the United States of America in accordance with 24 C.F.R. § 201.54. The Secretary is the holder of the Note on behalf of the United States. (Secy. Stat., at 3). Petitioner is indebted to the Secretary in the following amounts: \$16,123.56 as the unpaid principal balance as of February 28, 2003; \$483.71 as the Department of Treasury (DMS) fee; \$4,030.89 as the private collection agency (PCA) fee; and interest on said principal balance from February 28, 2003, at 5% per annum until paid. (Declaration of Lester J. West dated March 24, 2003) .

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in a specific amount. Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner claims that the debt is not enforceable against her because a

prior divorce agreement shifted the obligation to repay this debt to Petitioner's former spouse. (Petitioner's Letter dated February 14, 2003, hereinafter "Pet. Ltr. ").

As a cosigner on the installment note, Petitioner is jointly and severally liable with her former spouse for repayment of the debt. "Liability is characterized as joint and several when a creditor may sue the parties to an obligation separately or together." Mary Jane Lyons Hardy, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). A divorce decree purporting to release Petitioner from this joint obligation does not affect the claims of an existing creditor unless the creditor was a party to the action. Wendy Kath, HUDBCA No. 89-4518-L8, at 2 (December 26, 1989). In this case, neither the Secretary nor the lender were parties to the divorce action, thus binding Petitioner to her prior contractual obligations. Petitioner's divorce decree only determined rights and liabilities between Petitioner and her former spouse. Kimberly S. King (Theide), HUDBCA No. 89-4587-L74 (April 23, 1990). Petitioner may seek to enforce the divorce decree against her ex-husband in state or local court to recovery monies paid to HUD by her to satisfy this obligation. However, this does not preclude the Secretary from enforcing this debt against Petitioner. Deborah Gage, HUDBCA No. 86-1276-F283 (January 14, 1986). Petitioner remains jointly and severally liable to the contract at issue and the Secretary has the right to enforce the obligation against her individually.

Petitioner also contends that wage garnishment "has hurt [her] financial responsibilities tremendously." (Pet. Ltr.). While Petitioner may wish to negotiate repayment terms with the Department, this Board is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4 2 06. Petitioner may also request a review of her financial status by submitting to that HUD Office a Title I Financial Statement (HUD Form 56142). Petitioner may also request from HUD a proposed written agreement for the repayment of this debt under terms agreeable to HUD. 31 C.F.R. § 285.11(e)(2)(ii). In any event, Petitioner has provided no legal or credible factual basis on which this Board can find that she is not liable for repayment of the outstanding balance due on this loan.

ORDER

For the reasons set forth above, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is vacated.

It is hereby ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment to the extent authorized by law.

A handwritten signature in black ink, appearing to read 'DAVID T. ANDERSON', with a stylized flourish at the end.

David T. Anderson
Administrative Judge

Date: April 29, 2003